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**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

<b>In re:</b>	)	
	)	<b>Case No. 08-35653-KRH</b>
<b>CIRCUIT CITY STORES, INC., et al.,</b>	)	
	)	<b>Chapter 11</b>
<b>Debtors.</b>	)	

**GLENMOOR LIMITED PARTNERSHIP'S RESPONSE IN OPPOSITION TO  
LIQUIDATING TRUST'S FORTIETH OMNIBUS OBJECTION TO LANDLORD  
CLAIMS**

Glenmoor Limited Partnership ("Glenmoor"), by its undersigned counsel, makes this Response to the Liquidating Trust's Fortieth Omnibus Objection to Landlord Claims (the "Objection"), as it relates to Glenmoor's Claim No. 12387 for lease rejection damages ("Claim No. 12387"). In support thereof, Glenmoor states as follows:

**Background**

1. The Claim arises out of a lease of real property in Raleigh, North Carolina, where Debtor operated its Store No. 840.
2. The landlord of said property is Glenmoor Limited Partnership ("Glenmoor"). Glenmoor leased the underlying property to Circuit City Stores, Inc. via a Lease dated August 1, 1996 ("Lease"). A true and correct copy of the Lease is attached as Exhibit A to Claim No.

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12387, which is incorporated herein by reference. A copy of the Lease will be provided upon request. The term of the Lease expired on July 31, 2016.

3. The Debtor filed for relief under Chapter 11 of the Bankruptcy Code on November 10, 2008. At the time of filing, the Debtor had not paid any rent or charges for the month of November, which were due November 1, 2008.

4. The Debtor rejected the Lease and vacated as of March 10, 2009.

5. On April 24, 2009, Glenmoor properly and timely filed Claim No. 12387, asserting an unsecured claim for lease rejection damages in the amount of \$701,827.73. It was assigned Claim No. 12387.

6. On February 25, 2011, the Trustee filed its Ninth Omnibus Objection to Claims. The Trustee proposed in that Objection that Claim No. 12387 should be allowed in the amount of \$694,055.60. Glenmoor, based solely on litigation costs, did not oppose this minor objection, and on May 27, 2011, this Court entered an Order Sustaining the Ninth Omnibus Objection to Claims, which allowed Claim No. 12387 in the amount of \$694,055.60.

7. On April 20, 2012, the Trustee filed its Objection, again objecting to Claim No. 12387, but this time asserting that the Claim should be allowed only for the amount of \$59,031.68. The Trustee did not disclose the grounds for this reduced calculation.

8. As for an explanation of the basis of this latest objection, the Trustee asserts only that Debtors are not liable for the Claim “unless the Claimant at issue has met its applicable mitigation burden.”

9. Although the Trustee has not identified what Claimant’s “applicable mitigation burden” is, paragraph 30(a) of the Lease states that Glenmoor agreed to use “reasonable efforts

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to mitigate its damages” following a default. Circuit City’s rejection of the Lease constituted a default.

10. As a threshold matter, the Trustee has failed to overcome the primary validity of the Claim No. 12387 pursuant to Federal Rule of Bankruptcy Procedure (“FRBP”) 3001(f), which provides: “A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.” FRBP 3001(f).

11. As courts have consistently recognized, if a party in interest objects to a claim, the objecting party has the burden to introduce evidence regarding the excessiveness of the amount or the invalidity of the claim itself to rebut the presumed validity of the proof of claim. *See e.g., Stancill v. Harford Sands, Inc. (In re Harford Sands Inc.)*, 372 F.3d 637, 640-41 (4th Cir. 2004) (“The creditor’s filing of a proof of claim constitutes prima facie evidence of the amount and validity of the claim. The burden then shifts to the [objecting party] to object to the claim. The [objecting party] must introduce evidence to rebut the claim’s presumptive validity.”) (internal citations omitted).

12. Here, the Trustee has not offered any evidence to rebut the prima facie validity of Glenmoor’s Claim No. 12387. Accordingly, the Objection should be overruled on this ground alone.

13. Instead, the Objection inexplicably seeks to alter the governing burden of proof by demanding that Glenmoor (rather than the Trustee) establish the extent to which it has mitigated its damages. The Trustee does not offer any legal (or other) basis for excusing its evidentiary burden regarding mitigated damages under controlling law. Such failure to comply with applicable law provides another independent ground for overruling the Objection.

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14. Despite the foregoing, any assertion by the Trustee that Glenmoor failed to mitigate its damages is baseless.

15. Attached hereto as Exhibit A is the Affidavit of Jenny Petri setting out in detail the substantial and significant efforts taken by Glenmoor and its agents to re-let and/or sell this property. The content of this Affidavit is incorporated by reference as if fully set out herein.

16. As more fully described in the Affidavit, Glenmoor substantially exceeded its “applicable mitigation burden.” The objection to Claim No. 12387 should be dismissed or denied in its entirety.

17. Addresses for notices: all communications involving this claim or the objection should be directed to counsel below.

WHEREFORE, Glenmoor respectfully requests (i) that the Fortieth Omnibus objection concerning Claim No. 12387 be dismissed or denied in its entirety; (ii) that its lease rejection claim (Claim No. 12387) be allowed in the amount of \$694,055.61; and (iii) that Glenmoor have such other and further relief as it may be entitled.

Dated: June 21, 2012.

Respectfully submitted,

GLENMOOR LIMITED PARTNERSHIP

By: /s/Garren R. Laymon

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**CERTIFICATE OF SERVICE**

I, Kent P. Woods, hereby certify that on the 21st day of June, 2012, a true and correct copy of the foregoing Response was served electronically using the ECF system on all registered users of the CM/ECF system who filed notices of appearance in this matter.

s/Kent P. Woods

Kent P. Woods

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